

## MEMORANDUM OF LAW

DATE: September 13, 1995

TO: Rulette Armstead, Assistant Chief of Police, Professional Standards Unit

FROM: City Attorney

SUBJECT: Americans with Disabilities Act Accommodations for Members of the Civilian Review Board on Police Practices

### QUESTION PRESENTED

Does the Americans with Disabilities Act (the "ADA") mandate that, as a reasonable accommodation, a member of the Civilian Review Board on Police Practices (the "CRB") who is disabled be allowed to participate in patrol car ride-alongs?

### SHORT ANSWER

Probably not. The determination of what is required by the ADA must include careful evaluation of all factors. As a rule, generalizations about an individual's ability to participate in a program will not suffice to preclude access to that program. However, in evaluating the specific requirements of a program, safety risks to the disabled individual, as well as others, are a key consideration.

### BACKGROUND

Members of the CRB are required by the CRB bylaws to participate in ride-alongs with an officer of the San Diego Police Department on a monthly basis. The general practice of the CRB is to allow CRB members to select the type of ride-along in which they wish to participate. Members are encouraged to participate in as many types of ride-alongs, in as many divisions, as possible to help them more effectively evaluate the complaints they review. The varieties include, for example, gang detail, regular patrol, helicopter detail, vice, et cetera. The choices are numerous and members are allowed to pick and choose areas of interest to them personally.

Minimal requirements exist for members of the public and CRB who wish to participate in the ride-along program. The requirements refer only to age and residency. They do not include any physical requirements.

During ride-alongs, participants fully interact with both the officers and the public. They may, for example, go into residences and places of business with the officers. They may accompany officers

during foot pursuits. Participants frequently leave the patrol car with the officer to more closely observe the interaction between the officer and the public. Additionally, ride-alongs are taught how to use the radio and other safety equipment for the protection of themselves and the officer if needed. Finally, at the officer's discretion, a ride-along may be taught how to release and fire the patrol car shotgun.

Ms. Taylor, a new CRB member, has asked the Department to allow her to participate in ride-alongs to the full extent that other members are allowed to participate. However, Ms. Taylor's disability confines her to a wheelchair. Additionally, Ms. Taylor has limited use of her hands and arms. Due to her disabilities, Ms. Taylor has, until this time, been allowed to ride-along only with supervising sergeants. She has been precluded from riding with patrol officers because of police department concerns that her disabilities might hinder the officers in the performance of their duties or pose safety risks for the officer and/or Ms. Taylor. Ms. Taylor feels this accommodation does not adequately meet her needs and has asked that, despite her disability, she be allowed to fully participate in the ride-along program, including patrol duty, and not be limited to riding with sergeants only. You have asked what is required as a reasonable accommodation pursuant to the ADA in this situation. The following analysis responds to your question.

#### ANALYSIS

The ADA was adopted by Congress in 1990 and became effective in July 1992. Its purpose is to provide equal opportunity and access to people with disabilities in the areas of employment, public accommodations, transportation and the provision of programs and services. There are five (5) titles to the ADA, each addressing a distinct area of the law. Title II, addressed by this memorandum, provides that programs and services offered by a public entity to the public be provided to disabled members of the public on a basis which allows them access to the programs and services on an equal basis with members of the public who are not disabled.

Specifically, 28 C.F.R. Section 35.130(a) provides:

- (a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

Subsection (b)(2) goes on to say:

A public entity may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate

or different, despite the existence of permissibly separate or different programs or activities.

Finally, 28 C.F.R. Section 35.104 defines a qualified individual with a disability as follows:

Qualified individual with a disabilityF

The ADA defines "an individual with a disability" in the same terms as the Rehabilitation Act of 1973 defines a "handi-capped individual." Thus, courts are guided by the Rehabilitation Act in construing the language of the ADA. *Belton v. Scrivner, Inc.*, 836 F. Supp. 783, 787 (W.D. Okla. 1993).

means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

Pursuant to the regulations, the City may sponsor separate programs for the disabled. However, regardless of the existence of separate or alternative programs, it must, to the extent possible, also allow access to the disabled to its usual and customary programs and services. The City must, where possible, make reasonable accommodations so that its programs are accessible to all. For example, the City provides, among other accommodations, assisted hearing devices at Council meetings, disabled seating at stadium events and sign language interpreters, when requested, at public forums. Such adjustments to permit accessibility to the disabled have been deemed reasonable accommodations.

The ADA requires the City to make accommodations where possible. The accommodations requested must be reasonable before they will be mandated by the ADA. Reasonableness is to be determined with reference to all pertinent factors. The ADA does not require the City to ignore an individual's disability when determining whether that person may participate in a City program.

Instead, it requires only that an "otherwise qualified handicapped individual" not be excluded from participation in a . . . program "solely by reason of his handicap," indicating only that mere possession of a handicap is not a permissible ground for assuming an inability to function in a particular context.

*Southeastern Community College v. Davis*, 442 U.S. 397, 405 (1979).

One factor addressed by the ADA involves health and safety risks. Although persons with disabilities are generally entitled to participate fully in a public entity's programs, this right may be curtailed if the individual poses a significant risk to the health or safety of himself/herself or other individuals. "If reasonable accommodation will not eliminate a significant safety risk, a handicapped person is not otherwise qualified." *Chandler v. City of Dallas*, 2 F.3d 1385, 1395 (5th Cir. 1993). The police department must, therefore, determine what the risks are, and whether they can be eliminated. This decision can only be made by weighing the specific facts of each case. The decision may not be based on perception or generalization. For example, in *Wright v. Columbia University*, 520 F. Supp. 789 (E.D. Pa. 1981), the plaintiff offered proof that no substantial risk of serious injury to his one sighted eye existed if he were allowed to play football. On that basis, the court found that Columbia University's refusal to allow the plaintiff to participate in the football program based solely on its fears that he may damage his one good eye were not supported by proof and, therefore, violated the Rehabilitation Act. The court stated that the plaintiff was refused an opportunity to participate "'solely' by reason of his handicap," not because he was unable to play football at the university level. *Id.* at 793.

The court also noted that "the purpose of Section 504 (the ADA), however, is to permit handicapped individuals to live life as fully as they are able, without paternalistic authorities deciding that certain activities are too risky for them." *Grube v. Bethlehem Area School Dist.*, 550 F. Supp. 418, 423 (E.D. Pa. 1982).

Thus in making the determination whether to allow Ms. Taylor to participate in ride-alongs, the department must base its decision on articulable facts rather than unsubstantiated concerns for Ms. Taylor's safety. Nevertheless, significant safety issues are raised by the instant request and the department must weigh the issues carefully in reaching its decision.

The first concern is, obviously, what effect on the officer's performance Ms. Taylor's presence will have. For example, you have indicated Ms. Taylor wants to interact with the officers and citizens in their contacts in the same manner as do other ride-alongs. This would, presumably, involve assisting Ms. Taylor out of the patrol vehicle and to her wheelchair. Assuming Ms. Taylor can get into her wheelchair independently, there is still the question of where the wheelchair could be carried and how it will be made accessible to Ms. Taylor. A wheelchair will not fit in the front seat of the patrol car and putting it in the back seat would make the wheelchair inaccessible to Ms. Taylor because of the prisoner cage. The officer would, therefore, need to remove the wheelchair before Ms. Taylor could get herself in and out of

the patrol vehicle. Multiply this action by the number of stops an officer may make during a shift and the time spent assisting Ms. Taylor could well be prohibitive. Moreover, the emergency nature of a police officer's duties could make any delay by the officer to assist Ms. Taylor critical to the successful resolution of an emergency.

The second issue is whether the presence of Ms. Taylor would affect the safety of Ms. Taylor, the officer or other members of the public. Should the officer be forced, by an emergency, to leave Ms. Taylor in the patrol vehicle while he or she is performing police duties, Ms. Taylor would be left in the untenable position of being unable to remove herself from harms way should a violent incident erupt. It is uncertain whether Ms. Taylor could even operate the safety equipment to assist herself or the officer. The City has, in the past, had a ride-along shot while sitting in the patrol vehicle. Thus, the risk of harm is not mere speculation, but very real indeed. The City is not required to expose Ms. Taylor or the City to such potential liabilities under the guise of a reasonable accommodation.

#### CONCLUSION

The ADA requires that reasonable accommodations be made in the provision of public services and programs. "Reasonable" must be considered with regard for all attendant circumstances. The ADA does not require the City to place its officers or public in situations where the potential for harm is great. However, the decision must be made on the basis of facts, specific to Ms. Taylor, and not perceptions about people with disabilities in general.

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

SAM:mrh:jrl:mb:341.1(x043.2)

cc Patricia Sieglen,

Disability Coordinator

ML-95-65